

BLE File No. DIS-2(01-332)
CSXT File No. 1(01-332)

PUBLIC LAW BOARD NO. 6470

PARTIES TO DISPUTE:

BROTHERHOOD OF LOCOMOTIVE ENGINEERS))	
VS)	NMB Case No. 5
)	Award No. 5
CSX TRANSPORTATION, INC.)	
(Former Seaboard Coast Line RR Co.)))	

STATEMENT OF CLAIM:

Claim of dismissed Engineer L. J. Carswell (ID# 179893) for full reinstatement to the service of CSXT as Locomotive Engineer. Such reinstatement to include removal of all record of discipline assessed in this incident from his personal record, full pay for all lost wages, cumulative vacation time undisturbed, seniority standing unimpaired, all Health & Welfare Benefits intact and unreduced, and full restoration of all other rights thereto pertaining to his employment with CSXT.

FINDINGS AND OPINION

The Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as amended. This Board has jurisdiction of the dispute here involved. The parties to this dispute were given due notice of hearing thereon.

Claimant was summoned to a formal investigation on a charge that he violated Rule G and/or Safety Rule 21 when a random drug test administered on February 21, 2001, showed positive for amphetamines and methamphetamine. Following the investigation Carrier found claimant guilty of the charge against him and dismissed him from service.

The record before this Board indicates that claimant had previously tested positive in a test administered on November 5, 1998. At that time he voluntarily entered the Employees Assistance Program (EAP). Carrier notes that claimant had therefore been in the program for less than three years when he tested positive for the second time. Carrier also notes that when claimant entered the EAP, part of the agreement permitting him to do so was a requirement that he would abstain from using alcohol or other prohibited substances for a period of five years. It is Carrier's position claimant failed to comply with this agreement requirement, therefore, dismissal from service was warranted.

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The Organization has argued before this Board that claimant was denied his right to a fair and impartial investigation. The basis for such argument is that claimant's representative requested that certain information be supplied to him in advance of the scheduled investigation and that such request was denied. The Organization also alleges that the Social Security Number appearing on the testing documents was not the correct Social Securing Number for claimant.

The record reveals that claimant's representative did send a certified mail letter (not dated) to Carrier requesting some 14 documents and other information. Carrier's District Superintendent denied this request by letter dated March 30, 2001, stating that the pertinent documentation and information would be available at the investigation. A review of the investigation transcript reveals that when such information was introduced both claimant and his representative were given ample opportunity to review such information and documents. Neither claimant nor his representative requested additional time to study the information so presented.

Carrier has taken the position before this Board that the agreement between the parties does not require the advance production of documents. The Board agrees with this Carrier argument and must hold that Carrier's action in denying the request of claimant's representative did not have the effect of denying claimant his right to a fair and impartial investigation. We should also here note that since the parties did not see fit to add "right of discovery" language to the existing agreement provision, this Board has no authority to amend the rule to provide such language.

With respect to the argument concerning the erroneous Social Security Number, it is noted the number first appeared on the General Drug Testing and Control Form dated February 21, 2001, and that claimant signed such form certifying the information (including the Social Securing Number) was correct. This Social Security Number then followed all documents used in the testing process. The error in the Social Security Number was claimant's error when he certified the number shown was correct.

It is the opinion of this Board that the Organization's arguments with respect to procedural errors are not sufficient to warrant a finding that claimant was denied his due process rights. The Organization objections are hereby overruled.

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Evidence produced at the investigation makes it clear that claimant did test positive for the use of amphetamines and methamphetamine when tested on February 21, 2001. Inasmuch as this was claimant's second violation of Rule G, he was no longer entitled to remain or continue in the EAP. Carrier's decision to dismiss claimant from service was not improper.

AWARD

Claim denied.


F. T. Lynch, Neutral Chairman


Patricia A. Madden, Carrier Member


Paul T. Sorrow, Employee Member

Award date May 1, 2002